

ID: CCA_2009102715060357

Number: **200948054**

Release Date: 11/27/2009

Office:

UILC: 461.00-00

From:

Sent: Tuesday, October 27, 2009 3:06:09 PM

To:

Cc:

Subject: RE: RR Issue

-- because I do not work on section 461 issues, I forwarded your email to the persons who do and below is their response.

It appears that you are arguing that the all events test is not met until the claim for a rebate is filed under the theory that the filing of the claim is not a ministerial act. Where a taxpayer's obligation to pay expenses is based on a contract, the terms of the contract are relevant to determine what event fixes the right to the liability. Thus, whether the filing of a claim is ministerial or not is a factual inquiry that depends upon the contractual terms. Because your email does not describe the contract terms or what type of rebate is at issue, we cannot make this determination.

We suggest that you look at the ASG on Medicaid Rebates, which analyzed the 461 arguments in the Medicaid Rebate situation. The ASG reversed an earlier CIP which held that the manufacturer's liability wasn't fixed until a later point in time--the year in which the quarterly claim for reimbursement (utilization report) is sent by the State and received by the manufacturer.

Also,
issue. She may be reached at

will be happy to talk to you about this
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